MEMORANDUM OF LAW

DATE: June 22, 1987

TO: City Auditor
FROM: City Attorney
SUBJECT: Request from Internal Revenue Service for
        Taxpayer Levy Information

   You have recently asked this office to review a request from
the Internal Revenue Service (IRS) for taxpayer levy information
on individuals who may owe federal income tax and determine if
the release of this information is permissible. According to the
material accompanying your memorandum, the IRS is currently
compiling a list of organizations that will assist them in
locating delinquent taxpayers by providing the following
information:

   1. Employee's current or last known address/telephone number
   2. Employee's social security number
   3. Employer's address/telephone number
   4. Wages paid and pay date
   5. Employment/membership application
   6. Credit union affiliation with employee's company

If the information is to be made available, the IRS has also
asked if it may be provided over the telephone or if requests by
mail will be required.

   There is no question that the IRS is an agency authorized by
law to receive payroll information to include an employee's
wages, name, address and social security number. Ғ26 USC . 6001
et seq., 26 CFR 1.6052-1.σ The remaining issue is whether or
not, under the present facts, the release of any of the
additional information would constitute an unwarranted invasion
of personal privacy of a City employee. Except for one caveat,
we do not believe that the requested information falls within
that category for the following reasons.

   First, release of this information by The City of San Diego
to the IRS for the purpose of locating individuals who owe

federal income taxes is not a public disclosure of such
information. Secondly, much of the information requested is not
personnel information, the disclosure of which constitutes an
unwarranted invasion of personal privacy under these
circumstances. In upholding a lower court order to publicly
release similar information contained in a firefighter's
personnel file, the court in Braun v. City of Taft, 154

Cal.App.3d 332, 345, 201 Cal.Rptr. 654 (1984) indicated:

> The data listed on the ⌐salary⌐ card was
> not in any way embarrassing. One's telephone
> number and address, although personal are
> seldom secret. There is nothing in the record
> to show that such information was not
> available through a city directory or
> telephone book. Few persons would find
> interest in Polston's social security and
> credit union numbers, or birth date. A salary
> classification is public information.
> (. 6254.8.)

> The court was within its discretion in
> finding that the disclosure of the face sheet
> of the salary card would not constitute an
> unwarranted invasion of personal privacy.

We therefore believe that the release of the requested information to the IRS under the present facts is permissible. However, prior to releasing an individuals' employment application form, the application form should be scrutinized to ensure that it does not contain any additional personal information the disclosure of which would constitute an unwarranted invasion of personal privacy. Such information should be redacted from the form before releasing it to the IRS.

In addition, we must state that each request for personnel information must be evaluated on its own facts. There are circumstances when, for valid reasons, an employee of The City of San Diego is entitled to keep such information ⌐such as a home address or home telephone number⌐ confidential. We also believe that, while a public employee's salary is subject to disclosure pursuant to Gov't Code . 6254.8, the amount and type of an employee's payroll deductions are a matter of personal privacy.

In response to your question concerning the acceptance of requests for information over the telephone, you may certainly

require any request by the IRS for information to be in writing. In fact, because of the sensitive nature of these requests, we would advise you to do so.

                    JOHN W. WITT, City Attorney
                    By
                        John M. Kaheny
                        Deputy City Attorney

JMK:smm:040(x043.2)
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